MONTANA LEGISLATIVE HISTORY

Chapter 416 19 99

Bill H _____ S 82 Original bill & history ✓C

H. Committee on State Admin.		S. Committee on Business & Ind.	
Hearing Date(s) 3-2	✓C	Hearing Date(s) 1-22	✓C
3-11	✓C	2-3	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

4/20	2nd Reading Free Conference Committee Report Adopted	86	14
4/21	3rd Reading Free Conference Committee Report Adopted	79	20
4/21	Sent to Enrolling		
4/26	Returned from Enrolling		
4/26	Signed by President		
4/29	Signed by Speaker		
4/30	Transmitted to Governor		
5/06	Signed by Governor		
5/07	Chapter Number Assigned		
	Chapter Number 571		
	Effective Date: 5/06/1999 - All Sections		

SB 82 Introduced by Doherty *LC0402 Drafter: Lane*

Generally Revise Statutes Relating to the Public's Right to Examine Documents and Observe the Deliberations of Government;...

By Request of Department of Justice

12/18	Introduced		
1/04	1st Reading		
1/04	Referred to Business and Industry		
1/12	Fiscal Note Requested		
1/18	Fiscal Note Received		
1/19	Fiscal Note Signed		
1/19	Fiscal Note Printed		
1/22	Hearing		
2/03	Committee Executive Action--Bill Passed as Amended	6	0
2/03	Committee Report--Bill Passed as Amended		
2/06	2nd Reading Passed	48	0
2/08	3rd Reading Passed	48	0
	Transmitted to House		
2/16	Referred to State Administration		
3/02	Hearing		
3/11	Committee Executive Action--Bill Concurred as Amended	10	7
3/12	Committee Report--Bill Concurred as Amended		
3/27	2nd Reading Concurred	68	32
3/29	3rd Reading Concurred	73	27
	Returned to Senate with Amendments		
4/06	2nd Reading House Amendments Concurred	50	0
4/07	3rd Reading Passed as Amended by House	49	0
4/07	Sent to Enrolling		
4/08	Returned from Enrolling		
4/10	Signed by President		
4/12	Signed by Speaker		
4/12	Transmitted to Governor		
4/22	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 416		
	Effective Date: 10/01/1999 - All Sections		

SB 83 Introduced by Halligan *LC0541 Drafter: Heiman*

Impose a Wholesale Energy Transaction Tax on Electric Energy Introduced on State Transmission Lines at a Rate of 0.03 Cent per Kilowatt Hour of Electricity

SENATE BILL NO. 82

INTRODUCED BY DOHERTY S

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATUTES RELATING TO THE PUBLIC'S RIGHT TO EXAMINE DOCUMENTS AND OBSERVE THE DELIBERATIONS OF GOVERNMENT; CLARIFYING THE PROCEDURE FOR OPENING COMPETITIVE SEALED PROPOSALS; AMENDING SECTIONS 5-3-106, 18-4-304, 23-5-115, 23-5-116, 30-10-107, 33-1-409, 33-2-1116, 33-2-1701, 33-16-205, 33-20-1310, 44-4-203, 44-5-301, 50-15-121, 50-15-122, 61-3-101, 61-11-105, AND 81-23-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 5-3-106, MCA, is amended to read:

"5-3-106. Procedure for polling legislators. ~~(1)~~ Within 5 days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot ~~which~~ that contains:

~~(a)~~(1) the names of the legislators making the request;

~~(b)~~(2) the reasons for calling the special session;

~~(c)~~(3) the purposes of the special session;

~~(d)~~(4) the requested convening date and time of the special session;

~~(e)~~(5) the date by which legislators ~~must~~ shall return the ballot, which may not be more than 30 days after the date of the mailing of the ballots; and

~~(f)~~(6) a stamped return envelope.

~~(2) The secretary of state shall keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first.~~"

Section 2. Section 18-4-304, MCA, is amended to read:

"18-4-304. Competitive sealed proposals. (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) Proposals must be opened so as to avoid disclosure of contents of constitutionally protected material to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection ~~after contract award. After the contract is executed, proposal~~ Proposal documents may be inspected by the public, subject to the limitations of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4.

(5) The request for proposals must state the evaluation factors and their relative importance. The award must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal. ~~In conducting discussions, there may not be disclosure of any information derived from proposals submitted by competing offerors.~~"

Section 3. Section 23-5-115, MCA, is amended to read:

"23-5-115. Powers and duties of department -- licensing. (1) The department shall administer the provisions of parts 1 through 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.

(6) The department may not make public or otherwise disclose confidential criminal justice information ~~obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116~~, as defined in 44-5-103, or proprietary business information specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter."

Section 4. Section 23-5-116, MCA, is amended to read:

"23-5-116. Disclosure of information. (1) The department shall, upon request, disclose ~~the following~~ information ~~from a license or permit application:~~

~~(a) the applicant's name;~~

~~(b) the address of the business where the activity under the license or permit is to be conducted;~~

~~(c) the name of each person who has an ownership interest in the business; and~~

~~(d) the types of permits requested by the applicant.~~

~~(2) The department shall, upon request, disclose:~~

~~(a) public criminal justice information, as defined in 44-5-103, as required by 44-5-301;~~

~~(b) all records and other information, except confidential criminal justice information, as defined in 44-5-103, that relates to:~~

~~(i) a sanction imposed under 23-5-136, for a violation of this chapter or a department rule; or~~

~~(ii) any other civil or administrative sanction or penalty imposed under a provision of this chapter or a department rule for a violation of this chapter or a department rule~~ concerning a current or former gambling license applicant or gambling licensee, or any other person engaged in gambling or a gambling activity governed by parts 1 through 8 of this chapter, except:

(a) confidential criminal justice information, as defined in 44-5-103; and

(b) proprietary business information specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.

~~(3)~~(2) ~~In addition to the information enumerated in subsections (1) and (2)~~ Notwithstanding the limitations set forth in subsection (1), the department may disclose any ~~other relevant~~ information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency;

(b) the department of revenue and the federal internal revenue service; and

(c) a gambling regulatory agency of another state, a local government unit of another state, a tribal government, or a foreign nation, provided that the disclosure of the information complies with the law of that jurisdiction and that the receiving entity has been approved for receipt by the Montana attorney general."

Section 5. Section 30-10-107, MCA, is amended to read:

"30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter must be under the general supervision and control of the state auditor, the ex officio securities

commissioner. The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out the provisions of parts 1 through 3 of this chapter. A rule or form may not be adopted unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports ~~wherever~~ whenever practicable.

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information filed with or obtained by the commissioner and not made public. The provisions of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or employees to disclose any information or the fact that ~~any~~ an investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to ~~any~~ an act done or omitted in good faith in conformity with ~~any~~ a rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding must be public ~~unless the commissioner grants a request joined in by all the respondents that the hearing be conducted privately~~.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders that have ever been entered under parts 1 through 3 of this chapter. The register must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under rules the commissioner prescribes.

(6) Upon request and at a reasonable charge, the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document that is a matter of public record. In ~~any~~ a proceeding or prosecution under parts 1 through 3 of this chapter, ~~any~~ a certified copy is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and

exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange~~,~~ or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's ~~last recorded~~ last-recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed."

Section 6. Section 33-1-409, MCA, is amended to read:

"33-1-409. Examination reports -- hearings -- confidentiality -- publication. (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes

of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial~~, confidential,~~ investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of ~~any~~ witnesses or the production of ~~any~~ documents considered relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of ~~any~~ an investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination ~~must~~ may be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) ~~Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of~~

~~30 days except to the extent provided in subsection (2). After 30 days, the~~ The commissioner ~~may~~ shall open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it ~~confidential and~~ in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of ~~any~~ an examination, the commissioner may initiate any proceedings or actions as provided by law.

(6) All ~~working papers, recorded information, documents, and copies produced by,~~ confidential criminal justice information, as defined in 44-5-103, and proprietary business information specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by~~;~~ or disclosed to the commissioner or any other person in the course of an examination made under this part must be given confidential treatment, ~~are~~ is not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access to confidential criminal justice information and proprietary business information shall agree in writing, prior to receiving the information, to treat the information in the ~~confidential~~ manner required by this section unless the prior written consent of the company to which it pertains has been obtained."

Section 7. Section 33-2-1116, MCA, is amended to read:

"33-2-1116. Confidentiality of information. All ~~information, documents, and copies thereof~~ confidential criminal justice information, as defined in 44-5-103, and proprietary business information specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and 33-2-1112 containing confidential criminal justice information and proprietary business information ~~shall~~ must be given confidential treatment, ~~and shall~~ may not be subject to subpoena, and ~~shall~~ may not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and

its affiliates who would be affected ~~thereby~~ notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication ~~thereof~~ of the proprietary business information, in which event ~~he~~ the commissioner may publish all or any part ~~thereof~~ of the proprietary business information in ~~such~~ a manner ~~as he may deem~~ that the commissioner considers appropriate."

Section 8. Section 33-2-1701, MCA, is amended to read:

"33-2-1701. Licensure of reinsurance intermediaries. (1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a corporation:

(a) in this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

(b) in another state, unless the reinsurance intermediary-broker is a licensed producer in this state or another state that has a law substantially similar to this law or unless the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state that has a law substantially similar to this law or unless the person is licensed in this state as a nonresident insurance intermediary.

(3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

(a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this part. A license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license. All authorized persons must be named in the application and in

any supplements to the application. A license issued to a corporation must authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All authorized persons must be named in the application and in any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as the agent for service of process in the manner provided for by this title for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of each change in its designated agent for service of process, and the change may not become effective until acknowledged by the commissioner.

(5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment:

(i) the applicant, a person named on the application, or a member, principal, officer, or director of the applicant is not trustworthy;

(ii) a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary; or

(iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

(b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license. ~~The document is privileged and is not subject to public disclosure under Title 2, chapter 6, part 1.~~

(6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this section."

Section 9. Section 33-16-205, MCA, is amended to read:

"33-16-205. Noncompliance of rates -- notice. If, after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers ~~which~~ that engages in joint underwriting or joint reinsurance or upon the basis of other information or upon sufficient complaint as provided in 33-16-204, the commissioner has good cause to believe that ~~such~~ the insurer, organization, group, or association or any rate, rating plan, or rating system made or used by ~~any such~~ the insurer or rating organization does not comply with the requirements and standards of this chapter applicable to it, ~~he~~ the commissioner shall, unless ~~he~~ the commissioner has good cause to believe ~~such~~ that the

noncompliance is willful, give notice, in writing, to ~~such~~ the insurer, organization, group, or association stating ~~therein~~ in what manner and to what extent ~~such~~ the noncompliance is alleged to exist and specifying ~~therein~~ a reasonable time, not less than 10 days ~~thereafter~~ after receipt, in which ~~such~~ the noncompliance may be corrected. ~~Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206.~~"

Section 10. Section 33-20-1310, MCA, is amended to read:

"33-20-1310. Examination of business and practices of licensee or applicant -- maintenance of business records. (1) The commissioner may examine the business and practices of any licensee or applicant for a license when the commissioner determines an examination to be necessary. The commissioner may order a licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting ~~any~~ an examination.

(2) A viatical settlement provider shall maintain records of all transactions of viatical settlement contracts of the viatical settlement provider and shall make the records available to the commissioner for inspection during reasonable business hours. The records must be maintained for a period of not less than 5 years from the date of their creation.

(3) The commissioner may at any time require a licensee to fully disclose the identity of all stockholders, partners, officers, and employees.

(4) The names of and individual identification data for all policyholders and certificate holders who have entered viatical settlement contracts with viatical settlement providers are confidential and may not be disclosed except ~~as considered necessary by the commissioner in administration of this part~~ in cases in which the commissioner determines that the merits of public disclosure exceed the demands of individual privacy."

Section 11. Section 44-4-203, MCA, is amended to read:

"44-4-203. Registration records. (1) The registration records of each vehicle ~~so~~ registered ~~shall~~ must be maintained by the department of justice.

(2) The contents of ~~such~~ confidential registration records may be disclosed only at the discretion of the attorney general when there is a legitimate law enforcement purpose for disclosure."

Section 12. Section 44-5-301, MCA, is amended to read:

"44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except ~~for the following:~~

~~(a) Whenever~~ when a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

~~(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.~~

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents ~~shall~~ must be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information."

Section 13. Section 50-15-121, MCA, is amended to read:

"50-15-121. Copies from system of vital statistics. (1) Except as provided in subsections ~~(4),~~ (6)~~,~~ and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of filing. Copies issued from amended records must be marked and must show the effective date of the amendment. Copies issued from delayed records must be

marked, must include the date of filing, and must contain a statement of the evidence used to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for the adoptive child.

(4) A certified copy or other copy of a death certificate ~~containing information or data that would identify any person or institution named in a certificate or report and the cause of death information may not be issued, except as follows:~~

~~(a) upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives, as specified by department rule;~~

~~(b) when a documented need for the cause of death to establish a legal right or claim has been demonstrated, as specified by department rule;~~

~~(c) when the request for the copy is made by or on behalf of a person or entity that provides monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;~~

~~(d) upon specific request by federal, state, or local agencies for research or administrative purposes and when approved for release by the department;~~

~~(e) when needed for research activities and approved for release by the department; or~~

~~(f) upon receipt by the department of an order directed to the department from a court of competent jurisdiction ordering the release~~ must be issued upon request of any person.

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed to permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section."

Section 14. Section 50-15-122, MCA, is amended to read:

"50-15-122. Disclosure of information from vital records or vital reports -- rules. (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in ~~any~~ a vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from

records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) Immediately upon the filing of a record with the department, the fact that a birth or death has occurred or a record of marriage or dissolution of marriage may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121, complete birth ~~or death~~ records may be released to the public 30 years after the date of birth ~~or death~~. The department shall adopt rules that provide for the continued safekeeping of the records.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection."

Section 15. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department -- records. (1) The department shall keep a record, as specified in this section, of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) the name of the owner, the residence address by street or rural route, town, and county, and the mailing address if different ~~than~~ from the residence address;

(b) the name and address of the conditional sales vendor, mortgagee, or other lienholder and the amount due under contract or lien;

(c) the manufacturer of the vehicle;

(d) the manufacturer's designation of the style of the vehicle;

(e) the identifying number;

(f) the year of manufacture;

(g) the character of the motive power and the shipping weight of the vehicle as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on the manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) another index of registration as the department considers expedient.

(4) The department shall determine the amount of motor vehicle taxes and fees to be collected at the time of registration for each light vehicle subject to tax under 61-3-503 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the taxes and fees on each motor vehicle at the

time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(8) All records must be open to inspection during reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information and if the demands of individual privacy clearly exceed the merits of public disclosure."

Section 16. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information -- fees. (1) Except as provided in subsection (2), the department shall, upon request ~~and with the licensee's approval~~, furnish a person the individual Montana driving record of a licensee, showing the following:

(a) licensee identification data, which may not include the individual's residence address, social security number, or information provided through means of an electronic tracking device;

(b) driver's license status and expiration date;

(c) convictions of the licensee; and

(d) traffic accidents in which the licensee was involved.

(2) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena. ~~The department shall, upon request, furnish a criminal justice agency or any person or firm having a legitimate purpose as determined by the department with the individual Montana driving record of a licensee showing the items listed in subsections (1)(a) through (1)(d).~~

(3) A fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. All driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."

Section 17. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer prices for class I, class II, and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish prices by means of flexible formulas that must be devised so that they bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things the prices received by farmers for all products other than milk, the prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider, so that all interested parties will have opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk in classes I, II, and III must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state, provided that milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend an official rule in the same manner provided in this section for the original

establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the arrangement. An official order is not effective until it is approved in a referendum conducted by the board by mail ~~and by secret ballot~~ among affected producers, producer-distributors, and distributors. ~~The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum.~~ The official order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be enforced and audited for compliance by the department."

- END -

FISCAL NOTE

Bill #: **SB0082** **Title:** **Generally revise laws concerning disclosure of governmental information**

Primary Sponsor: **Steve Doherty** **Status:** **As introduced**

Sponsor signature Date Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:		
General Fund	$32,907	$0
Revenue:	$0	$0
General Fund		
Net Impact on General Fund Balance:	**($32,907)**	**0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. The Driver's Privacy Protection Act (DPPA) enacted by Congress in August 1994 prohibited the release of information contained in an individual's motor vehicle files and imposed a civil penalty of not more than $5,000 a day for each day of substantial noncompliance. DPPA prohibited the release and use of certain personal information from state motor vehicle records except under very specific circumstances unless the individual waived his/her right to privacy under that section of law.
2. The Montana Department of Justice (DOJ) maintains motor vehicle records under 61-3-101, MCA, and driver licensing/history records under 61-11-102, MCA. During FY 1998, the DOJ implemented steps to

SB 82 SPONSOR: Doherty, Steve SHORT TITLE: Generally revise laws concerning disclosure of governmental information
BY REQUEST OF: Department Of Justice
REFERRED ON: 01/04/1999 HEARD ON: 01/22/1999 (S) Discussed in Committee ON: 02/02/1999
EXECUTIVE ACTION: 02/03/1999 Bill Passed as Amended -- VOTE: 6 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 103 SPONSOR: Franklin, Eve SHORT TITLE: Amend insurance information and privacy protection act
BY REQUEST OF: State Auditor
REFERRED ON: 01/04/1999
FINAL DISPOSITION 03/31/1999 Chapter Number Assigned

SB 107 SPONSOR: Mahlum, Dale SHORT TITLE: Generally revise the laws governing investments by insurers
BY REQUEST OF: State Auditor
REFERRED ON: 01/04/1999 HEARD ON: 01/21/1999
EXECUTIVE ACTION: 02/05/1999 Bill Passed as Amended -- VOTE: 5 - 0
FINAL DISPOSITION 04/15/1999 Chapter Number Assigned

SB 108 SPONSOR: Berry, Dale SHORT TITLE: Generally revise professional licensing laws
BY REQUEST OF: Department Of Commerce
REFERRED ON: 01/04/1999 HEARD ON: 01/29/1999
EXECUTIVE ACTION: 02/02/1999 Bill Passed as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

SB 115 SPONSOR: Stang, Spook SHORT TITLE: Exclude employees waiving coverage from small employer eligibility
BY REQUEST OF: State Auditor
REFERRED ON: 01/04/1999 HEARD ON: 01/15/1999
EXECUTIVE ACTION: 01/26/1999 Bill Passed as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned

SB 123 SPONSOR: Crismore, William SHORT TITLE: Septic disposal fee increase
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 01/04/1999 HEARD ON: 01/14/1999
HEARD ON: 02/09/1999
EXECUTIVE ACTION: 02/12/1999 Bill Passed as Amended -- VOTE: 7 - 0
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

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comply with the requirements of the DPPA. Prior to FY 1998 vehicle record information was available to the public upon request and payment of a fee.

3. Passage of this bill is expected to allow access to the state's motor vehicle and driver licensing records by individuals/entities prohibited due to DPPA. No data or information is available to the agency to estimate the expected increases in workload or increased cost of computer processing time due to increased volume of requests for information.
4. It will be necessary to contract for programming with an outside vendor since DOJ programming staff are committed to completing the current backlog of more than 9,000 hours of programming necessary to comply with 1997 legislative changes. One-time expenses for programming changes are projected to cost $22,800 plus $5,107 for increased computer processing charges generated during programming and system testing, or a total of $27,907 during FY 2000.
   (304 hours at $75/hour = $22,800 + $5,107 = $27,907)
5. In FY 1998 the state general fund received $1,712,417 in revenues from fees charged for the distribution of motor vehicle and driver history records to authorized individuals/entities. No data or information is available to the agency to estimate any increase in general fund revenues due to the passage of this bill.
6. Section 4 of the bill would impact Gambling Control Division at a state special fund cost of $1,500 in FY 2000 for rule making procedures/activities and publishing.
7. There is no fiscal impact to the Department of Transportation.
8. There is no fiscal impact to the Department of Public Health and Human Services.
9. There is no fiscal impact to the Secretary of State.
10. There is no fiscal impact to the Department of Commerce.
11. There is no fiscal impact to the Department of Revenue.
12. There is no fiscal impact to the Department of Administration.
13. There is minimal fiscal impact to the State Auditor's Office.

FISCAL IMPACT:

	FY2000 Difference	FY2001 Difference
Expenditures:		
Operating Expenses	$34,407	$0
Funding:		
General Fund (01)	$32,907	$0
State Special Revenue (02)	1,500	
TOTAL	$34,407	$0
Revenues:	$0	$0
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	($32,907)	$0
State Special Revenue (02)	(1,500)	

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 22, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 210, 1/14/1999
SB 82, 1/18/1999
Executive Action: None

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 210

Sponsor: **SENATOR JOHN "J. D." LYNCH, SD 19, BUTTE**

SEN. SPRAGUE wanted to know how the fees were arrived at say for a $100,000 home. **Mr. Aasen** said that normally a flat fee average throughout the state would be between $230-$300. Some are charging a base fee of $210 and for every $1000 over the $100,000 of the purchase price might be $1 per thousand. Some may inspect and charge so much per square feet.

SENATOR JOHN HERTEL asked **Annie Bartos, Department of Commerce,** if there was an entity for home inspectors in their department. **Ms. Bartos** said there are no divisions within the department that regulate home inspectors. **SEN. HERTEL** asked if the counties or cities have any control over this. **Ms. Bartos** said that she was not aware of any county or city authority regulating home inspectors . She felt that if there was any question over the legal aspect of a home inspection it would be taken up between the client and the home inspector.

SEN. COCCHIARELLA asked **Ms. Bartos** if her department receives any complaints about home inspections. **Ms. Bartos** said that she had reviewed the bill with the Consumer Affairs staff and at the present time, they have not received any complaints.

Closing by Sponsor:

SEN. LYNCH closed. I appreciate your consideration of this bill. I feel that people should have some assurance or uniformity of inspections. There are people trying to do the right job and they would like to see some standardization of home inspections. It is a consumer protection bill.

{Tape : 1; Side : A; Approx. Time Counter : 27.8}

HEARING ON SB 82

Sponsor: **SENATOR STEVE DOHERTY, SD 24, GREAT FALLS**

Proponents: **Steve Bullock, Department of Justice**
John Kuglin, MT Bureau Chief, Associated Press
Mike Voeller, Lee Newspapers of Montana
Dennis Casey, Executive Director, Gaming Industry Assoc. of MT
Jim Fall, MT Newspaper Assoc.
Riley Johnson, MT Broadcasters Assoc.

Frank Cote, Deputy Insurance Commissioner, State Auditor's Office
Susan Witte, Blue Cross/Blue Shield
Greg Van Horssen, State Farm Insurance

Opponents: None

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, SD 24, GREAT FALLS. Today, I bring you **SB 82** which is a bill that has been developed by the Department of Justice in cooperation with a number of other departments. It attempts to deal with the issue of privacy in government records and the openness of government records and the disclosure of same. In the last few years, we have seen some fairly important litigation dealing with public records in this state. In the last year alone, we have seen two Supreme Court decisions, the Great Falls Tribune Co. vs. Day and Montana Environmental Information Center vs. Cooney that dealt with secret government documents. We have in Article II, Section 9 of the Montana Constitution a very clear constitutional imperative that says "when the demands of individual privacy clearly exceed the merits of public disclosure" that is the only time when government documents are to be kept confidential or secret or not disclosed to the public. That is a very high standard. The Montana Supreme Court in these decisions has said you need to meet that standard and when you don't meet the standard of the State of Montana, not only will we strike the law down but we are paying out attorneys fees because we keep losing. We keep losing those decisions because of the constitutional imperative.

One of the things that the Attorney General's Office did was to make a through and broad review of Montana statutes, some of which were enacted prior to 1972. Others that have not been looked at under the light of the constitutional imperative of opening up government documents to the public and ask where is the potential problem? Let us clean it up as best we can and we will probably be back in other sessions in the future as we discover other sections of Montana law that do not meet the constitutional test. There are people here from the Department of Justice and other departments. There are some amendments that will be brought forward. The intent of this legislation is to go through the statutes and clean them up and bring them into compliance with the constitutional imperative.

A couple of sections that merit mention are: the procedure for polling legislators will now be public; the Department of Justice gambling licensing; and there is much information that is trade secret information and we don't want to meddle with that.

There is other information, though, that is clearly public information: administrative hearings that were conducted by the State Auditor when the State Auditor is acting as a Securities Commissioner is another section of the bill; notice the failure to comply with state law when setting insurance rates. There are vehicle registration records.

There is the dissemination of some public criminal justice information; the pooling arrangements and paying producer prices for milk previously has been confidential information which we don't think deserves that degree of protection. We need some clarity on the law and some re-evaluation of statutes that have not been looked at according to the constitution of Montana.

{Tape : 1; Side : A; Approx. Time Counter : 35.2}

Proponents' Testimony:

Steve Bullock, Department of Justice. He submitted his written testimony and a section by section analysis of **SB 82 EXHIBIT(4)**. He also handed in amendments **EXHIBIT(5)**.

{Tape : 1; Side : B; Approx. Time Counter : 2}

John Kuglin, MT Bureau Chief, Associated Press. He submitted his written testimony **EXHIBIT(6)**. He then handed in testimony for Ian Marquand **EXHIBIT(7)**.

Mike Voeller, Lee Newspapers of Montana. I am here today to voice our strong support for **SB 82.** More often than not during the last 28 years I have been around here as a lobbyist. My mission has been to try to preserve the public's right to know and to participate in governmental decision making process. We applaud this effort to let even more sun shine on government. We urge a Do Pass.

Dennis Casey, Executive Director, Gaming Industry Assoc. of Mt. I am here in support of the bill although I do have a reservation

and a suggested amendment which is very important. I refer to Sections 3 and 4 that refer to the gambling laws of the State of Montana. On page 2, lines 27 - 30, "business information specifically identified", it is anticipated that this will be through rule making. The Fiscal Note indicates that there is some money set aside for that. My personal preference would be that this information would be in law rather than rules. But, we are supporting this because we feel this bill will make things more clear for all of us in the industry. In regard to the language which is repeated on the next page, you will note that present law says the Department may not make public or otherwise disclose information obtained in the application or tax recording process. Tax reporting process has been struck and it is not specifically addressed in the amendment in the bill that has been offered. I have talked with the Department of Justice and they have told me they would have no objection to serving in the appropriate places, language that would make it clear that tax reporting processes were confidential. I have spoken with **SEN. DOHERTY** and he agrees with that amendment.

{Tape : 1; Side : B; Approx. Time Counter : 7.4}

Jim Fall, MT Newspaper Assoc. There are 83 newspapers across the state. We want to add our support to the opening of the doors and the washing of a few windows that provide greater insight into public information here in Montana. We support this bill whole heartedly.

Riley Johnson, MT Broadcasters Assoc. We stand in support of this bill and ask for a Do Pass.

Frank Cote, Deputy Insurance Commissioner. As you can see, a number of sections that are proposed affect the State Auditor's Office. We do support the bill with the amendments. We do have one additional amendment that came about as the result of a phone conversation with the National Association of Insurance Commissioners this morning. The one thing we would like to see as an amendment, in addition to the other amendments is on page 7, Subsection 6, is the term "working papers" put back into the bill. These are papers that the investigators and examiners use and put together their own personal working papers. It does not affect the overall intent of the bill and the actual report of the examiners would be a public item.

Susan Witte, Blue Cross/Blue Shield. Blue Cross/Blue Shield does support **SB 82** as amended. However, we differ with a number of the amendments that have been presented by the Attorney General's Office. Specifically, we would support amendment number 5 which reinserts "confidential" in terms of a confidential examination report. We support the amendment number 6 which reinserts "holding that examination report for 30 days while both the insurance commissioner's staff and the party that is being examined has time to look at it. The amendments we would submit are in lieu of the amendments number 7, 8, 9, 10, 11 and 12. Our problem is with substituting trade secrets or personal information for what is now in the bill as "proprietary business information". I am not sure if the Trade Secrets Act in Montana does cover what has been classified as "Proprietary business information". So in supporting the previously mentioned amendments, I also offer an amendment that is the third one on our submitted amendments **EXHIBIT(8)**. It is an amendment to page 7, line 24 and would reinsert "portions of working papers, recorded information; documents, and copies produced by;" and deleting the amendments which substitute trade secrets and personal for proprietary business information.

Greg Van Horssen, State Farm Insurance. I am here on behalf of State Farm and also stand for Jacqueline Lenmark, AIA, American Insurance Association who could not be here today. We do support **SB 82** with the amendments as suggested by the Department of Justice and as modified by Blue Cross/Blue Shield this morning. To summarize those suggested modifications there is a concern about the deletion of "proprietary business information" from the statute. I've had discussions with the Department of Justice to the effect that term "trade secrets" or "personal privacy interest" may address this term "proprietary business information" as that term, I understand, hasn't been defined in case statute. Give it a little time to look into that and I may come to that conclusion. I simply raise that concern as previously voiced by Blue Cross/Blue Shield as something I would like to reserve the right to comment on as this process continues. State Farm Insurance Company and AIA support **SB 82** based on the suggested modifications we heard this morning.

Opponents' Testimony: None.

{Tape : 1; Side : B; Approx. Time Counter : 12.7}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE said he felt this bill belonged in the Judiciary Committee because when the talk is of judges and judges' ruling, etc., he felt a little inadequate covering all these areas, i.e. it was outside their area.

SEN. BEA MCCARTHY said she agreed with **SEN. SPRAGUE**; however, she referred to Page 13, Line 10, and said she didn't know why **Steve Bullock** should have any right to her death certificate. She said the request of any person concerned her and as a member of a family, she took that as a very definite invasion of privacy at a time she didn't want it. **Mr. Bullock** said he understood her concern because he had recently dealt with such an issue; however, when he viewed his family member's death certificate, he also viewed the Constitution and spoke to DPHHS. Whether we always like it or not, case law doesn't continue after a death. One can argue family interest still exists, but given information on the death certificate, that's a difficult argument.

Closing by Sponsor:

SEN. STEVE DOHERTY. Since 1972, we've had the provisions of the Constitution which clearly demand that citizens be able to get government documents. That's very, very important and is the spirit with which you ought to look at **SB 82.** Once a document goes to the government, it's public information and automatically goes there unless the merits of privacy outweigh the merits of public disclosure. In dealing with this kind of legislation and in dealing with implementing that section of the Constitution, we ought to approach it from that perspective. As to the questions about tax returns or tax processes, we can deal with those. It certainly is not anyone's intent to have a taxpayer's tax return become public information and if this bill is passed, that won't be a concern.

{Tape: 1; Side: B; Approx. Time Counter: 17.8 - 33.4; Comments: SB 115 was discussed during the above time. EXHIBIT(9) and EXHIBIT(10) were submitted.}

SENATE BUSINESS & INDUST
EXHIBIT NO. 4
DATE 1-22-99
BILL NO. S B 82

DEPARTMENT OF JUSTICE

SB 82: Revising Laws Concerning Disclosure of Public Information

Background

Article II, Section 9, of the Montana Constitution provides that:

> "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Although the framers of the 1972 Montana Constitution gave primacy to the public's right of access to government documents and deliberations, state law has not always reflected this constitutional command. Some laws have failed to reflect the right-to-know provisions because they were written prior to the enactment of the 1972 Constitution and have not been revisited since. Moreover, the laws on our books typically are subjected to constitutional scrutiny only as a result of legal action, a costly and often time-consuming endeavor for the parties involved.

Constitutional Challenges

This past year alone, there were significant challenges to Montana laws on the basis that they unconstitutionally block the public's right of access guaranteed by Article II, Section 9:

- In Great Falls Tribune Co. v. Day, the Montana Supreme Court held that provisions of the Montana Procurement Act did not withstand constitutional scrutiny, and the Department of Corrections could not withhold certain information from the public during the proposal and contracting stage of building a private prison.

- In Montana Environmental Information Center v. Cooney, the District Court held that the law that kept secret the ballots cast by legislators responding to a call for a special legislative session until all had voted, was unconstitutional. The Secretary of State, with the Attorney General's agreement, conceded that the statute was unconstitutional.

Legislation, Not Litigation

Rather than continuing to expend state resources defending the constitutionality of laws that likely fall short of the requirements of Article II, Section 9, the Attorney General proposes to address potential problems through Senate Bill 82.

Although SB 82 may not address every statute that could be challenged on the grounds that it unconstitutionally restricts the public's right to examine documents or to observe the deliberations of all public bodies or agencies of state government, it is an important step in guaranteeing Montanans that the constitutional promise of openness in government will be fulfilled.

–over–

Sections 13 and 14. Death Certificates. Allows public access to death certificates.

Sections 15 and 16. Motor Vehicle Registration Records & Driver's License Records. Requires that the Department of Justice balance privacy rights against the public's right to know when restricting access or releasing personal information about a vehicle owner or driver.

Section 17. Pooling arrangements in paying producer prices for milk. Requires that the ballots of milk producers, producer-distributors, and distributors to enter into a statewide pooling arrangement be open to the public.

1999 Legislature
January 22, 1999

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 1-22-99
BILL NO. SB 82

Amendments to SB 82
1st Reading Copy (White)

For the Senate Business and Industry Committee

Prepared by Steve Bullock
Department of Justice
January 22, 1998

1. Page 2, line 2 through line 6.
Strike: Subsection (4) in its entirety.
Insert: "(4) After the proposals have been opened at the time and place designated in the request for proposal, proposal documents may be inspected by the public, subject to the limitations of:
(a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;
(b) matters involving individual safety as determined by the department;
(c) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308, MCA; and
(d) other constitutionally protected materials."

2. Page 2 line 29.
Following the second ","
Strike: "or proprietary business information"
Insert: "personal information protected by an individual privacy interest, or trade secrets, as defined in 30-14-402,"

3. Page 3, line 21
Following: ";"
Strike: "and"

4. Page 3, line 22
Following: "(b)"
Strike: "proprietary business information"
Insert: "personal information protected by an individual privacy interest; and (c) trade secrets, as defined in 30-14-402,"

5. Page 6, line 18.
Following: "~~confidential~~"
Insert: "confidential"

6. Page 7, line 10.
Following: the second "~~the~~"
Strike "The"
Insert: "Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days except to the extent provided in subsection (2). After 30 days, the"

7. Page 7, line 22.
Following: the second ","
Strike: " and proprietary business information"
Insert: "personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402,"

8. Page 7, line 28.
Following: "information"
Strike: "and proprietary business"
Insert: ", trade secrets, or personal"

9. Page 8, line 4.
Strike: " and proprietary business information"
Insert: "personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified"

10. Page 8, line 8.
Following: "information"
Strike: "and proprietary business"
Insert: ", trade secrets, and personal"

11. Page 8, line 14.
Following: "the"
Strike: "proprietary business"
Insert: "trade secrets or personal"

12. Page 8, line 15.
Following: "the"
Strike: "proprietary business"
Insert: "trade secrets or personal"

13. Page 11, line 24.
Following: "information"
Strike: "except"
Insert: "."

14. Page 11, line 25.
Following: "~~Whenever~~"
Strike: lines 25 through lines 27

15. Page 12, line 3.
Following: "from"
Insert: "the department or"

16. Page 17, line 14.
Following: "owner"
Strike: "or the owner's vehicle"

17. Page 17, line 15.
Following: "information"
Strike: "and"
Insert: "or"

18. Page 17, line 21.
Following: line 20
Strike: "(a) licensee identification data, which may not include the individual's residence address, social security number, or information provided through means of an electronic tracking device."
Renumber: subsequent subsections

19. Page 17, line 26.
Following: line 25
Insert: "(2) Unless the merits of public disclosure exceed the demands of individual privacy, a driving record of a licensee released under [subsection 1]must not disclose an individual's address, social security number, photograph, medical or disability information, or information provided through means of an electronic tracking device."
Renumber: Subsequent subsections

SENATE BUSINESS & INDUST
EXHIBIT NO. 6
DATE 1-22-99
BILL NO. SB 82

Associated Press
John W. Kuglin
Chief of Bureau

January 22, 1999

Chairman Hertel and members of the Senate Business and Industry Committee:

I am John Kuglin, Montana bureau chief for The Associated Press. I appear on behalf of the AP and the Freedom of Information Hotline and in support of Senate Bill 82. This is an exception to many of the bills that our organizations have seen over the years, which have restricted the public's right to attend government meetings and to have access to public records.

There are more than 125 laws - many in conflict with the state Constitution - that restrict the right of citizens to participate in government and to examine public documents. Even pet adoption records, as our attorney general has noted - are secret in Montana, the state whose constitution contains the strongest right to know provisions of any state constitution. This bill would end some of this secrecy.

I support the entire bill and would like to briefly comment on a few of its provisions and why they are needed.

On Page 1 (5-3-106 MCA), this addresses the practice of keeping legislative poll results secret until all legislators have voted or the deadline for voting passes. This is actually a housekeeping measure, because state District Judge Thomas Honzel ruled last February that the secrecy provision in the law was an unconstitutional infringement on the public's right to know.

On Page 8, release of criminal justice information (44-5-301 MCA), this would expand the information that may be disseminated to include misdemeanors and deferred sentences.

On Page 9 (50-15-121 MCA), death certificates would be opened to public inspection. This is one of the most significant sections of the bill in advancing the public's right to know. The public does have a right to know the cause of death, if, say, a prominent official dies under suspicious circumstances. Or how inmates died if they are killed during a riot in the state prison or one of Montana's jails.

On Pages 12-13 (61-11-105 MCA), this says that any person may have a copy of a driving record. Currently, the Justice Department decides if a person or company has a "legitimate purpose" in requesting this information before it is released. In drafting this change, the department has determined that it does not need to exercise this discretion.

I thank Attorney General Joe Mazurek and his staff for drafting this bill, and Senator Doherty for sponsoring this needed legislation. I have given the committee secretary a statement in support of Senate Bill 82 from Ian Marquand, president of the Montana Chapter of the Society of Professional Journalists.

Sincerely,

P.O. Box 5810, Helena, Montana 59604 406 442-7440

SENATE BUSINESS & INDUS
EXHIBIT NO. 7
DATE 1-22-99
BILL NO. SB 82

SPJ MONTANA

The Montana Professional Chapter of
The Society of Professional Journalists

#4 Kasota Ct. Missoula MT 59803

January 12, 1999

Sen. John Hertel
Chair, Senate Business & Industry Committee
Montana Legislature
Capitol Station
Helena MT 59620

Dear Sen. Hertel:

On behalf of the Montana Professional Chapter of the Society of Professional Journalists, I'm pleased to lend my voice in support of Senate Bill 82.

Quite honestly, we in the journalism profession are much more familiar with arguing in opposition to legislative proposals involving state information. This is because most bills dealing with public records attempt to restrict the public's access to those records.

Senate Bill 82 does the opposite. It takes significant steps towards opening state records in the spirit of both our state Constitution and statutory laws.

SPJ Montana is especially pleased that this bill would:

*End the practice of keeping legislative poll results secret until all votes are received. (5-3-106 MCA)

*Allow public inspection of competitive bids before a contract is awarded. (18-4-304 MCA)

*Open, at long last, death records to public inspection. (50-15-121 MCA)

*Allow the driving records of Montana licensees to be inspected by more than just a select, privileged, few. (61-11-105 MCA)

*End the secrecy surrounding votes by milk producers on referenda. (81-23-302 MCA)

SB 82 represents a major step forward for public participation and the public's right to know, which are hallmarks of Montana's government.

The Montana Professional Chapter of the Society of Professional Journalists congratulates the Attorney General and Senator Doherty for bringing this legislation forward and urges your committee to give SB 82 a "do pass" recommendation.

Sincerely,

Ian Marquand
Chapter President

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 1-22-99
BILL NO SB 82

Blue Cross & Blue Shield of Montana | **LEGBase Feedback**

Type:	SB		
Number:	0082	**LC:**	0402
Title:	Generally revise laws concerning disclosure of governmental information	**Author:**	Bill Jensen

Summary: **Proposed Amendments of BCBSMT to SB-82**

Comment (Rich Text):

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

Introduced Bill

Referencing Section 6 which amends 33-1-409:

Page 6, line 18::	Following: ~~"confidential"~~, insert: "confidential"
Page 7, line 10:	Following: ~~"After 30 days, the,~~ Strike:"The", Insert: "No later than 30 days prior to the adoption of the examination report under subsection (3)(a), the commissioner shall serve the proposed order and the proposed examination report upon the company and shall continue to hold the content of the order and the examination report as private and confidential information for that period. Upon issuance of the order adopting the examination report, the".
Page 7, line 24:	Following: "privilege", insert: "portions of working papers, recorded information, documents, and copies produced by:"

Created:	01/21/99 01:31:42 PM Bill Jensen	**Modified:**	01/21/99 02:28:08 PM Linda Price 01/21/99 02:29:29 PM Linda Price 01/21/99 02:35:30 PM Linda Price

including

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 1-22-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	X		
SEN. VICKI COCCHIARELLA	X		
SEN. BEA MC CARTHY	X		
SEN GLENN ROUSH	X		
SEN. FRED THOMAS	X		
SEN MIKE SPRAGUE, VICE CHAIRMAN	X		
SEN. JOHN HERTEL, CHAIRMAN	X		

DATE January 22, 1999

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: SB 82, SB 210

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Sheryl Motl	444 3315	Dept of Administration State of Montana	82	✓	
Debra Fulton	444-4250	Vital Statistics			
Mike Voeller	442-7284	Lee Newspapers Mont	82	✓	
John Kuglin	442-7440	ASSOCIATED PRESS MT FOI HOTLINE	82		
Chris Dorn	444.3539	Attorney Consultancy	210	✓	
TERRY A. AVERLANDT	452-4141	PROF. PROP. INSP. SERVICE	82	✓	
Jim Fall	443-2850	MT Newspaper Assn.	82	✓	
Hal Hasen	449-3755	Northern Rockies Chap Am. Society of Home Inspectors	210	✓	
Wes Mullaney	406-782-4434	Big Sky Inspection	210	✓	
A. FARRELL Rose	406 443-3647	Board of R/E Appraisers	210		✓
Steve Bullock	444-2026	Justice	82	—	
Dennis Casey	449-3481	Gaming Ind Assn	82	✓ with amendments	
Mike Foster	442-4162	MT Contractors' Assoc	82		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE January 22

SENATE COMMITTEE ON BTI

BILLS BEING HEARD TODAY: SB 82 SB 210

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Greg Van Horssen	2-0230	State Fund Ins Co	SB 82	~ Amd.	
Frances Cote	444-7797	St. Auditor	82	Amd	
Brenda Nordlund	444-2413	MDOT/MUD	82	✓	
Kati L. Kintli	443-4345	Montana Power Assoc	82	Amd	
Jacqueline T. Lenmark	2-0230	AIA	82	Amd	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 3, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 315, 1/29/1999
	SB 304, 1/29/1999
	SB 296, 1/29/1999
Executive Action:	SB 82; SB 296

{Tape : 1; Side : A; Approx. Time Counter : 0}

{Tape : 2; Side : A; Approx. Time Counter : 7.8; Comments : The Executive Action on SB 296 was not recorded on the tape at this point. The tape was not running.}

{Tape : 2; Side : A; Approx. Time Counter : 8.1}

EXECUTIVE ACTION ON SB 296

Motion/Vote: SEN. MCCARTHY moved that SB 296 DO PASS. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 82

Motion/Vote: SEN. ROUSH moved TO RECONSIDER ACTION TAKEN ON SB 82 ON 2-2-99. Motion carried unanimously. 5-0

Motion: SEN. COCCHIARELLA moved that SB 82 DO PASS.

Motion: SEN. COCCHIARELLA moved that SB 82 BE AMENDED.

Discussion: **CHAIRMAN JOHN HERTEL** said that he had spoken with the sponsor, the insurance people and Mr. Steve Bulloch, who pleaded to have this bill reconsidered. They have no problems with the amendments of **SEN. ROUSH** had presented. **Mr. Campbell, Legislative Counsel,** has indicated some difficulty without the amendments of the Department of Justice. **Mr. Campbell** said that the amendments of **SEN. ROUSH'S**, when he got them, brought up a question about how to put them because grammatically it didn't fit. However he did know that the Dept. and others who have come forward said they did not have problems with **SEN. ROUSH'S** amendments. He then presented the amendments that he had put together--both **SEN. ROUSH'S** and the Depts **EXHIBIT(10)**. He asked the committee to look at the second amendment and explained the new language. The rest of the amendments went together fine.

SEN. ROUSH said in hearing the explanation and in speaking to the person who wanted his amendments, there seems to be no problem in putting the two amendments together.

SEN. COCCHIARELLA asked **Mr. Bulloch** to explain why the change from proprietary business information to personal information protected. . . **Mr. Bulloch** said it would insert two things: one of which is personal information protected by privacy right and also trade secrets. The personal information is included in the insurance industry and in gambling. Through the licensing process, there is going to be information that is obtained that isn't necessarily the business' information. It could be anything from an individual's social security number to an individual's bank account. It is important that those kinds of things are protected. With the switch from proprietary business to trade secrets, we are attempting to protect the business' information and go to the outer limits of what the court says a business can withhold from public view. The court consents to trade secrets. With the use of proprietary business we run into some concerns, because in other than the original copy of **SB 82,** the words "proprietary business information is not used at all in the code. The code case law does not every define that. Trade secrets are defined in the code.

{Tape : 2; Side : A; Approx. Time Counter : 20.2}

Mr. Campbell explained that the issue here is a private person's right to know versus someone else's right to privacy. Constitutionally, the right to privacy in the Montana Constitution is secondary to the public's right to know. You must overcome the public's right to know in order to assert your privacy rights.

Mr. Bulloch contends that the state is doing a better job of protecting business' information and individuals' information by using the words "trade secrets".

SEN. COCCHIARELLA asked the committee to look at number one and wondered if there was any issue that should be explained. **Mr. Bulloch** said that the request had come from the Dept. of Justice. In the Great Falls Tribune vs. Day Case, the Supreme Court basically blew open our RFDR process. They said that competitive concealed bids can no longer be kept closed until after the contract has been executed. There are only certain bits of information that can be withheld at any time. The Dept. of Administration is actually setting forth those areas that the Court has recognized that they can continue to withhold. The

Dept. drafted these amendments and they meet constitutional muster. **SEN. COCCHIARELLA** said that the next amendment is number seven. **Mr. Bulloch** said that current law during an investigation conducted by the State Auditor's office would allow the investigation hearings to be held confidential. Then further allows that once the State Auditor has completed his investigation report, it is not open to public view for thirty days after the completion of the report. We are re-inserting quite a bit of the language that is currently in the code to protect these companies from disclosure prior to the point that they have a chance to act on it. **SEN. COCCHIARELLA** said that the next amendment is number seventeen, line fifteen. **Mr. Bulloch** said that there are two provisions dealing with drivers' license--both the registration and the records information. That one pertains to the registration. Right now, under the federal law of driver protection, if an individual says no, I do not want personal information released from my registration records, then the Dept. will not release that information. That law is still the law of the land, but it is questionable if it will be upheld. By replacing the word "and" and replace with "or" it would provide protection for the individual. The second provision pertains to drivers' records. It protects those provisions of the drivers' records like your photo, your address, etc. These will not be released unless the public's right to know exceeds an individual's privacy right.

SEN. MCCARTHY asked **Mr. Bulloch** what his definition of "individual privacy" is. **Mr. Bulloch** said that this has not been defined. The court goes more or less by the standpoint that more often than not it is an address or a social security number or a photo. It would be difficult to enumerate throughout what could be subject to an individual privacy protected by the Constitution.

Motion/Vote: SEN. COCCHIARELLA moved that SB 82 DO PASS AS AMENDED. Motion carried unanimously. 6-0

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Business and Industry** report that **Senate Bill 82** (first reading copy -- white) **do pass as amended.**

Signed: *Senator John Hertel, Chair*

And, that such amendments read:

1. Page 2, lines 2 through 6.
Strike: subsection (4) in its entirety
Insert: "(4) After the proposals have been opened at the time and place designated in the request for proposal, proposal documents may be inspected by the public, subject to the limitations of:"
(a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;
(b) matters involving individual safety as determined by the department;
(c) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308; and
(d) other constitutional protections.

2. Page 2, line 29.
Following: "44-5-103,"
Insert: "information obtained in the tax reporting processes,"
Strike: "or proprietary business information"
Insert: "personal information protected by an individual privacy interest, or trade secrets as defined in 30-14-402,"

3. Page 3, line 21.
Strike: "and"

4. Page 3, line 22.

Committee Vote:
Yes 6, No 0.

Strike: "proprietary business information"
Insert: "personal information protected by an individual privacy interest;"
(c) trade secrets, as defined in 30-14-402,"

5. Page 3, line 23.
Following: "privilege"
Insert: "; and (d) information obtained in the tax reporting processes"

6. Page 6, line 18.
Following: "~~confidential,~~"
Insert: "confidential,"

7. Page 7, line 10.
Strike: "The"
Insert: "Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days, except to the extent provided in subsection (2). After 30 days, the"

8. Page 7, line 22.
Strike: "and proprietary business information"
Insert: "personal information protected by an individual privacy interest, and trade secrets as defined in 30-14-402,"

9. Page 7, line 28.
Strike: "and proprietary business"
Insert: ", trade secrets, and personal"

10. Page 8, line 4.
Strike: "and proprietary business information"
Insert: "personal information protected by an individual privacy interest, and trade secrets as defined in 30-14-402,"

11. Page 8, line 8.
Strike: "and proprietary business"
Insert: ", trade secrets, or personal"

12. Page 8, lines 14 and 15.
Strike: "proprietary business"
Insert: "trade secrets or personal"

13. Page 11, line 24.
Strike: "except"
Insert: "."

14. Page 11, following line 24.
Strike: lines 25 through 27 in their entirety

15. Page 12, line 3.
Following: "from"
Insert: "the department or"

16. Page 17, line 14.
Strike: "or the owner's vehicle"

17. Page 17, line 15.
Strike: "and"
Insert: "or"

18. Page 17, line 21.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

19. Page 17, following line 25.
Insert: "(2) Unless the merits of public disclosure exceed the demands of individual privacy, a driving record of a licensee released under subsection (1) may not disclose an individual's address, social security number, photograph, medical or disability information, or information provided through means of a tracking device."
Renumber: subsequent subsections

- END -

HJ 36 SPONSOR: Harper, Hal SHORT TITLE: Designate capitol newsroom as J.D. Holmes memorial
REFERRED ON: 03/31/1999 HEARD ON: 04/07/1999
EXECUTIVE ACTION: 04/09/1999 Bill Passed -- VOTE: 17 - 0
FINAL DISPOSITION 04/26/1999 (H) Filed with Secretary of State

---

SB 5 SPONSOR: Tester, Jon SHORT TITLE: Eliminate retirement system membership fee
BY REQUEST OF: Public Employees' Retirement Board
REFERRED ON: 01/13/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/12/1999 Bill Concurred -- VOTE: 17 - 0
FINAL DISPOSITION 04/12/1999 Chapter Number Assigned

SB 57 SPONSOR: Stang, Spook SHORT TITLE: Clarify use of state vehicles
BY REQUEST OF: Department Of Transportation
BY REQUEST OF: Department Of Administration
REFERRED ON: 02/16/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/11/1999 Bill Concurred as Amended -- VOTE: 16 - 1
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

SB 70 SPONSOR: Stang, Spook SHORT TITLE: Clarify burial benefits for veterans
BY REQUEST OF: Joint Interim Subcommittee On Veterans' Needs
REFERRED ON: 01/13/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/11/1999 Bill Concurred -- VOTE: 17 - 0
FINAL DISPOSITION 03/31/1999 Chapter Number Assigned

SB 82 SPONSOR: Doherty, Steve SHORT TITLE: Generally revise laws concerning disclosure of governmental information
BY REQUEST OF: Department Of Justice
REFERRED ON: 02/16/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/11/1999 Bill Concurred as Amended -- VOTE: 10 - 7
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 120 SPONSOR: Bartlett, Sue SHORT TITLE: Revise state insurance flexible spending accounts
BY REQUEST OF: Department Of Administration
REFERRED ON: 01/14/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/03/1999 Bill Concurred -- VOTE: 14 - 0
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on March 2, 1999 at 8:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s): March 2, 1999
Executive Action:
Posted: SB 57, 3/2/1999; SB 70, 3/2/1999; SB 5, 3/2/1999

HEARING ON SB 57

Opening Statement by Sponsor: SEN. SPOOK STANG
{Tape : 1; Side : A; Approx. Time Counter : 0.9 - 2.9}

LOIS MENZIES, Dir. of Dept. of Admin. EXHIBIT(1)
{Tape : 1; Side : A; Approx. Time Counter : 2.9 - 7.4}

MARVIN PAGE, Dept. of Transportation,
{Tape : 1; Side : A; Approx. Time Counter : 7.5 - 7.9}

Questions from Committee Members and Responses:
REPS; THOMAS, WAGNER, HEDGES, BRAINARD, SMITH, BRAINARD
{Tape : 1; Side : A; Approx. Time Counter : 7.9 - 22.3}

Closing by Sponsor : SEN. SPOOK STANG
{Tape : 1; Side : A; Approx. Time Counter : 22.5 - 23.9}

HEARING ON SB 70

Opening Statement by Sponsor: SEN. SPOOK STANG
{Tape : 1; Side : A; Approx. Time Counter : 24.2 - 25}

Proponents' Testimony:

JIM JACOBSEN, Mt. Veteran's Affairs Div.
{Tape : 1; Side : A; Approx. Time Counter : 25.6 - 29.6}

HALL MANSON, Ct, Mt. Veteran's Affairs Div.
{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 0.9}

JOAN SLOAN, D.A.V. of Mt.
{Tape : 1; Side : B; Approx. Time Counter : 1 - 1.1}

Questions from Committee Members and Responses:
REPS; WAGNER, BRAINARD
{Tape : 1; Side : B; Approx. Time Counter : 1.1 - 4.7}

Closing by Sponsor: SEN. SPOOK STANG
{Tape : 1; Side : B; Approx. Time Counter : 4.8 - 5}

HEARING ON SB 82

Opening Statement by Sponsor: SEN. STEVE DOHERTY
{Tape : 1; Side : B; Approx. Time Counter : 5.6 - 5.9}

Proponents' Testimony:

STEVE BULLOCK, Dept. of Justice EXHIBIT(2)
{Tape : 1; Side : B; Approx. Time Counter : 5.9 - 21.8}

MIKE VOELLER, Mt. Lee Newspaper Assoc. EXHIBIT(3)
{Tape : 1; Side : B; Approx. Time Counter : 22 - 23.4}

JOHN GOODLAND, Mt. A.P. and Hotliner
{Tape : 1; Side : B; Approx. Time Counter : 23.8 - 24.4}

FRANK CODY, Dept. Ins. Comm./State Auditor
{Tape : 1; Side : B; Approx. Time Counter : 24.5 - 26.1}

Questions from Committee Members and Responses:
REPS; MANGAN, WAGNER LINDEEN, TASH, DELL, ANDERSEN, BRAINARD
{Tape : 1; Side : B; Approx. Time Counter : 26.1 - 30.1}
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 27.0}

Testimonial Witness:

DEBRA FULTON, Dept. of Medical Records and Services
{Tape : 2; Side : A; Approx. Time Counter : 25.5 - 27.0}

Discussion:
REPS; HEDGES, BRAINARD AND LINDEEN
{Tape : 2; Side : A; Approx. Time Counter : 27.2 - 28.9}

Closing by Sponsor: SEN. SPOOK STANG
{Tape : 2; Side : A; Approx. Time Counter : 28.9 - 30.6}

HEARING ON SB 5

Opening Statement by Sponsor: SEN. JON TESTER
{Tape : 2; Side : B; Approx. Time Counter : 1.4 - 2.5}

Proponents' Testimony:

KELLY JENKINS, PERS BOARD
{Tape : 2; Side : B; Approx. Time Counter : 2.5 - 3.9}

Questions from Committee Members and Responses:
REP.; HEDGES
{Tape : 2; Side : B; Approx. Time Counter : 4.4 - 7.2}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on March 11, 1999 at 8:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: Rep. Jeff Mangan (D)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s): SB 457, 471,, 3/8/1999
Executive Action: SB 57, 70, 82, 471, 457,; SJR 18
Posted: 2/17, NO DATE ON RECEIPT, 2/17, 3/2, 3/2, 2/4.

EXECUTIVE ACTION ON SB 57

Motion: **REP. WALTERS moved DO CONCUR on SB 57.**
{Tape : 1; Side : B; Approx. Time Counter : 17.4 - 17.5}

Discussion:
REPS; THOMAS, LOIS MENZIES (INFORMATIONAL TESTIMONY) BRAINARD.
{Tape : 1; Side : B; Approx. Time Counter : 17.5 - 22}

Motion: **REP. HAGENER moved SB 57 be amended per EXHIBIT(3)**
{Tape : 1; Side : B; Approx. Time Counter : 23 - 23.1}

Discussion:
REPS; RYAN, SMITH AND ADAMS.
{Tape : 1; Side : B; Approx. Time Counter : 23.1 - 25.0}

Vote: The motion carried by 16-1 to adopt amendment; REP. RYAN VOTING NO.
{Tape : 1; Side : B; Approx. Time Counter : 25 - 26}

Motion: **REP. HAGENER moved DO CONCUR AS AMENDED on SB 57.**
{Tape : 1; Side : B; Approx. Time Counter : 27.9 - 31}

Discussion:
REPS; WAGNER, LOIS MENZIES (INFORMATIONAL TESTIMONY), WALTERS, TASH, BRAINARD, THOMAS, LOIS MENZIES (INFORMATIONAL TESTIMONY).
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 1.0}

Vote: The motion carried 16-1; REP. WAGNER VOTING NO. REP. MANGAN VOTING BY PROXY. REP. WALTERS WILL CARRY SB 57 TO THE FLOOR.
{Tape : 2; Side : A; Approx. Time Counter : 10 - 10.3}

EXECUTIVE ACTION ON SB 70

Motion: **REP. HAGENER moved DO CONCUR on SB 70.**
{Tape : 2; Side : A; Approx. Time Counter : 10.5 - 10.7}

Discussion:
REPS; HEDGES, WAGNER, TASH, WAGNER. ***{Tape : 2; Side : A; Approx. Time Counter : 10.7 - 14.2}***

Vote: The motion carried 17-0. REP. MANGAN VOTING BY PROXY. REP. DELL WILL CARRY SB 70 TO THE FLOOR.

EXECUTIVE ACTION ON SB 82

Motion: **REP. HAGENER moved DO CONCUR on SB 82.**
{Tape : 2; Side : A; Approx. Time Counter : 15.5 - 15.8}

Discussion:
REPS; LINDEEN, SHERI H.(INFORMATIONAL TESTIMONY), TASH, HEDGES, CLARK, TASH, WAGNER, SHERI H. (NO OTHER CONCEPTUAL AMENDMENTS ARE NOTED), THOMAS.
{Tape : 2; Side : A; Approx. Time Counter : 15.9 - 27.4}

Motion: **REP. BRAINARD moved to CONCEPTUALLY AMEND SB 82 per EXHIBIT(4)**
{Tape : 2; Side : A; Approx. Time Counter : 27.5 - 27.8}

Discussion:
REPS; HAGENER, SHERI HEFFELFINGER (INFORMATIONAL TESTIMONY), BRAINARD.

Vote: The motion carried by unanimous vote to adopt amendments.
{Tape : 2; Side : A; Approx. Time Counter : 27.8 - 30}

Motion/Vote: **REP. TASH moved DO CONCUR AS AMENDED.** Motion carried 10-7; REPS; HAGENER, LINDEEN, SMITH, WAGNER, ADAMS, HEDGES, BRAINARD. REP. TASH WILL CARRY SB 70 TO THE FLOOR.
{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 1}

EXECUTIVE ACTION ON SB 471

Motion: **REP. LINDEEN moved DO CONCUR on SB 471**
{Tape : 2; Side : B; Approx. Time Counter : 2.2 - 3.1}

Discussion:
REPS; TASH, GOLIE, THOMAS, ADAMS, HEDGES
{Tape : 2; Side : B; Approx. Time Counter : 3.2 - 9.7}

Vote: The motion carried 17-0, unanimous. REP. GOLIE WILL CARRY SB 471 TO THE FLOOR.
{Tape : 2; Side : B; Approx. Time Counter : 9.8 - 10.1}

EXECUTIVE ACTION ON SB 457

Motion: **REP. HAGENER moved DO CONCUR on SB 457.**
{Tape : 2; Side : B; Approx. Time Counter : 10.2 - 10.5}

Discussion:
{Tape : 2; Side : B; Approx. Time Counter : 10.6 - 12.2}